

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any such offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of the director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,-

- (a) a company, means any body corporate and includes a trust, a firm, a society or other association of individuals; and
- (b) the director in relation to,-
 - (i) a firm, means a partner in the firm,
 - (ii) a society, a trust or other association of the individuals, means the person who is entrusted under the rules of the society, trust or other association with management of the affairs of the society, trust or other association, as the case may be.

CHAPTER – XIII

MISCELLANEOUS

Appeals 63. Save as otherwise provided in this Act, any person or Managing Committee, aggrieved by an order passed by an officer or authority under this Act may, within the prescribed period, prefer an appeal to the prescribed authority.

Revision by the State Government. 64. (1) The State Government may either suo moto or on an application from any person interested call for and examine the record of an educational institution or of any authority, officer or person in respect of any administrative or quasi-judicial decision or order, not being a proceeding in respect of which a reference to an arbitrator or an appeal to the High Court is preferred, to satisfy themselves as to the regularity, correctness, legality or propriety of any decision or order passed therein, and if, in any case it appears to the State Government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, they may pass order accordingly:

Provided that the State Government shall not pass any order adversely affecting any party unless such party has had an opportunity of making a representation.

(2) The State Government may stay the execution of any such decision or order pending the exercise of powers under sub-section (1) in respect thereof.

(3) Every application preferred under sub-section (1) shall be made within such time and in such manner and accompanied by such fees as may be prescribed.

Review.

65. (1) The State Government may, suo motu, at any time or on an application received from any person interested within ninety days of the passing of any order under the provisions of this Act review any such order, if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact.

(2) The provisions contained in the proviso to sub-section (1) and in sub-sections (2) and (3) of section 64 shall, so far may be, apply in respect of any proceeding under this section as they apply to a proceeding under sub-section (1) of that section.

Powers of Government to give directions.

66. (1) The State Government may, subject to other provisions of this Act, by order, direct the Director or any other officer not below the rank of the District Educational Officer to make an enquiry or to take appropriate proceeding under this Act in respect of any matter specified in the said order and the Director or the other officer, as the case may be, shall report to the State Government in due course the result of the enquiry made or the proceeding taken by him.

(2) The State Government may give such directions to any educational institution or tutorial institution as in its opinion are necessary or expedient for carrying out the purposes of this Act or to give effect to any of the provisions contained therein or of any rules or orders made thereunder and the Managing Committee or the owner, as the case may be, of such institution shall comply with every such direction.

(3) The State Government may also give such directions to the officers or authorities under its control as in its opinion are necessary or expedient for carrying out the purposes of this Act and it shall be the duty of such officer or authority to comply with such directions.

Power to enter and inspect.

67. (1) Every officer not below such rank as may be prescribed, shall subject to such conditions as may be prescribed, be competent to enter at any time during the normal working hours of an educational or tutorial institution, any premises of any such institution within the jurisdiction and to inspect any record, register or other documents or any movable or immovable property relating to such institution for the purpose of exercising his powers and performing his functions under this Act.

(2) Any officer authorized by the State Government in this behalf, may at any time during the normal working hours of any educational institution enter such institution or any premises thereof or any premises belonging to the Managing Committee of such institution if he has reason to believe that there is or has been any contravention of the provisions of this Act and search and inspect any record, accounts, register or other document belonging to such institution or of the Managing Committee, in so far as any such record, accounts, register or other document relates to such institution and seize any such records, accounts register or other documents for the purpose of ascertaining whether there is or has been any such contravention.

(3) In order to secure proper and effective utilization of the finances or resources or other assets of any educational institution in existence at the commencement of this Act it shall be competent for the State Government to invoke the provisions of sub-section (2) and ascertain such finances, resources and assets of any institution and after such ascertainment to give such directions to the Managing Committee as they deem fit.

(4) The provisions of Criminal Procedure Code, 1973 relating to searches and seizure shall apply, so far as may be to searches and seizures under sub-section (2).

2 of 1974

Penalty for obstructing officer or other person exercising powers under this Act.

68. Any person who obstructs an officer of the State Government in the exercise of any power conferred on him or in the performance of any function entrusted to him by or under this act or any other person lawfully assisting such officer in the exercise of such power or in the performance of such function or who fails to comply with any lawful direction made by such officer or person shall be punished with fine which may extend to two hundred and fifty rupees.

Protection of action taken in good faith.

69. No suit, prosecution or other legal proceeding shall lie against the State Government or any authority, officer or servant of the State Government for anything in good faith done or intended to be done under this Act or the rules made thereunder.

Investigation and cognizance of offences.

70. No court shall take cognizance of any offence punishable under this Act or the abetment of any such offence, save on complaint made by the competent authority or with the previous sanction of such authority.

Punishment for abatement of offences.

71. Whoever instigates or abets the commission of any offence punishable under this Act shall, on conviction, be punished with the punishment provided for the offence.

Enquiry and Proceedings.

72. All proceedings or enquiries before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 288 of the Indian Penal Code, 1860

45 of 1860

Non-application of the Act to certain institutions.

73. Nothing in this Act or the rules made thereunder shall apply to any minority educational institution to the extent they are inconsistent with the rights guaranteed under article 30 of the Constitution of India.

Removal of difficulties.

74. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, make such provisions not inconsistent with the said provisions as appear to them to be necessary or expedient to remove the difficulty.

2 of 1974

Delegation.

75. The State Government may, by notification in the Official Gazette, delegate all or any powers exercisable by it under this Act or rules made thereunder in relation to such matter and subject to such conditions, if any, as may be specified

in the direction to be exercised also by such officer or authority subordinate to the State Government as may be specified in the notification.

Power to make rules.

76. (1) The State Government may, by notification published in the Official Gazetteer and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for -

- (i) the classes or standards of education and upto which shall be considered as primary education;
- (ii) the curricula, etc. specified under sub-section (1) of section 6;
- (iii) the authorities and the manner in which appointments are to be made to the posts sanctioned under sub-section (2) of section 9 and the powers and functions of the officers and staff;
- (iv) the declaration as to what constitutes secondary or higher secondary education, technical education, special education, school places, school-age and attendance in schools or other institutions;
- (v) the establishment or maintenance and administration of educational institutions;
- (vi) the grant of registration or recognition to educational institutions and the conditions therefor;
- (vii) the period and the manner for applying for registration of institutions;
- (viii) the form of the register maintained for registration of educational institutions and tutorial institutions and of the registration certificate;
- (ix) the manner of submission of the report of the District Magistrate;
- (x) the conditions for recognition of existing institutions and the procedure therefore;
- (xi) the manner in which accounts, registers, records and other documents shall be maintained in the educational institutions and the authority responsible for such maintenance;
- (xii) the submission of returns, statements, reports and accounts by managements or owners of properties of educational or tutorial institutions;
- (xiii) the inspection of educational and tutorial institutions and the officers by whom inspection shall be made;
- (xiv) the mode of keeping and the auditing of accounts of such institutions;
- (xv) the standards of education and courses of study in educational institutions;
- (xvi) the grant of sums by the State Government to educational institutions towards providing scholarships, bursaries, fee concessions and the like;
- (xvii) the preparation and submission of development plan for educational institutions in general and for technical education and the contents of such plans;

- (xviii) the powers and the functions of the officers and other sub-ordinate staff of the Education Department;
- (xix) the preparation and sanction of building plans and estimates of the educational institutions and the requirements to be fulfilled by the buildings for the educational institutions maintained by the local authorities and private institutions;
- (xx) the purpose for which the premises of the educational institutions may be used and the restrictions and conditions subject to which such premises may be used for any other purpose;
- (xxi) the regulation of the use of text books, maps, plans, instruments and other laboratory and sports equipment in the institution.
- (xxii) the regulations for admission into educational institutions of pupils for the academic course, private study and other special courses and the attendance thereat;
- (xxiii) the manner of conducting the class and terminal examination and promotion of pupils to higher classes;
- (xxiv) the donations or contributions and the conditions subject to which they may be accepted by the educational institutions from the public and the naming of institutions.
- (xxv) the conditions for co-education in the educational institutions and the regulation of the conduct and discipline of pupils and the penalty for misconduct or indiscipline;
- (xxvi) the manner of service of notices, orders and other proceedings, of presenting appeals or applications for revision or review and the procedure for dealing with them and the fee in respect thereof;
- (xxvii) the scale of fees or charges or the manner of fixing fees or charges payable in respect of any certificate, permission, marks lists or other document for which such fees may be collected;
- (xxviii) elections to the Student Associations or Unions;
- (xxix) all matters expressly required or allowed by this Act to be prescribed or in respect of which this Act makes no provision or makes insufficient provision and a provision is, in the opinion of the State Government, necessary for the proper implementation of this Act;

(3) Every rule made under this Act, shall, immediately after it is made be laid before the State Legislature if it is in session and if it is not in session in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following, the House agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal and
Saving

77. (1) The Sikkim Education Act, 2002 is hereby repealed.

(2) On and from the date of commencement of this Act, all rules notifications and orders including the Sikkim Trade License and Miscellaneous Provisions Rules, 1985 so far as it relates to issue of Trade license to Private Educational Institutions shall stand repealed. 11 of 2002

(2) Notwithstanding such repeal, all actions taken under such rules, orders and notifications before such commencement shall be deemed to have been taken under the corresponding provisions of this Act.

By Order

R.K. PURKAYASTHA (SSJS)
LEGAL REMEMBRANCER-CUM-SECRETARY,
LAW DEPARTMENT.
File No. 16 (82)/LD/2005